IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 15822 of 2004

Between:

Khaja Afzaal, S/o. Khaja Muneer Ahmed,
Redhills, Hyderabad.

..... PETITIONER

AND

1 Osmania University, Hyderabad. rep by its Registrar
2 The Deccan College of Engineering & Technology, Darus-Salam, Nampally, Hyderabad rep by its Principal

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or Writs, Order or Direction, declaring the action of the first respondent in rejecting the application of the petitioner to appear for Theory Examination of Finite Element Analysis and Project (Viva) pertaining to II Semester of 4th Year B E (Mech.) Course, Scheduled to be held on 3 9 2004, as illegal and arbitrary and consequently direct the Respondents to accept the application of the petitioner and permit him to write the above said examinations and declare the results thereafter, award costs.

Counsel for the Petitioner : MR. N.SRIDHAR REDDY

Counsel for the Respondent No.1 : MR. DEEPAK BHATTACHARJEE

Counsel for the respondent No.2: None appeared

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.15822 OF 2004

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ORDER :

This writ petition is filed seeking a declaration that the action of the 1st respondent – Osmania University in rejecting the application of the petitioner to appear for theory examination of Finite Element Analysis and Project (viva) pertaining to II semester of 4th year B.E (Mech.) Course scheduled to be held on 3-9-2004 as arbitrary and illegal.

The petitioner states that he joined the 4-Year Engineering Course (B.E. Mechanical) in the 2nd respondent College in the academic year 1996-97. He appeared for the final examinations in the month of September, 2001. However, he was declared failed in the subject of Finite Element Analysis. Admittedly, he could

not appear for the said subject for about three years. In the month of May, 2004 he made an application requesting the first respondent to permit him to appear for the said examination. He also paid the requisite fee. However, his application was rejected with an endorsement as under :

"Appeared in September, 2001. Not eligible."

Aggrieved by the said action, this writ petition is filed contending *inter alia* that the rejection of his application without assigning any reasons is arbitrary or illegal. It is claimed that the Rules and Regulations of the University do not prohibit any student from appearing for examination after a gap of three years or more. It is also stated that in fact the first respondent university has passed a resolution in the meeting of the Standing Committee of the Academic Senate held on 13-02-2004 to give concession in time limit to the students who have not completed their studies within the time limit by giving two more years to complete the backlog subject. The said decision was communicated to all the colleges on 17-2-2004. Since he appeared for the examination and failed in the year 2001, as per the decision of the Standing committee he is entitled to re-appear for the said examination as sought by him in the year 2004. Hence, this Writ Petition seeking a declaration that the above action of the respondent is arbitrary and illegal.

On behalf of the 1st respondent – Osmania University, a counter-affidavit has been filed stating that the petitioner was admitted in Deccan College of Engineering and Technology in the year 1996-97 and he was promoted to I-Semester of 2nd year with three backlogs of I-year. After writing the II-semester of 2nd year main examination, the petitioner had total backlogs of 10 papers. The petitioner was therefore detained in 2nd year II-semester and he did not continue the studies during the year 1998-99. The petitioner was promoted to B.E. 3rd year I-semester in December, 1999 after he passed the required backlogs of the 1st year. The petitioner wrote B.E. 3rd year I-semester in 1999-2000, but he failed with nine backlogs. The petitioner was detained in B.E. 3rd year II-semester for not clearing the B.E. 2nd year backlogs and hence could not continue the study during the year 2000-2001. The petitioner did not study B.E. 4th year I and II semesters on account of backlogs of B.E. 2nd year and I

and II semesters. The petitioner was however permitted to appear in the examinations as per the direction of the Hon'ble Court. The attendance and internal marks for B.E. 4th year I and II semesters was not awarded to the petitioner as the petitioner was not a registered student in the college. As per the rules of promotion for engineering course, the petitioner is not eligible to be promoted to the I semester of 4th year from II semester of 3rd year for having more than eight backlogs. Further, the petitioner also did not fulfill the attendance rules of the university for writing the 4th year and I and II semester examinations. Any student shall have minimum 75% of attendance for writing the examination and in the instant case, the petitioner was not a registered student of 4th year for not being promoted in terms of the promotion rules. As on date, the petitioner did not fulfill the requirement of the course of study of B.E. 4th year I and II semesters and therefore he was not allowed to appear for the examinations.

I have heard the learned Counsel for both the parties and perused the material on record.

The version of the 1st respondent University that the petitioner has more than 8 backlogs and he was not promoted to 4th year from 3rd year has been denied by the petitioner in his Reply Affidavit. The specific case of the petitioner is that except the theory examination in the subject of Finite Element Analysis and Project Viva pertaining to II-semester of 4th year, he has completed all other subjects. It is also his specific case that by virtue of the orders of this Court in the earlier writ petition, the results in respect of other subjects of the final year have already been declared. Nothing has been placed before this Court by the 1st respondent contradicting the stand taken by the petitioner that except the two subjects which are the subject matter of this writ petition, he has passed all other subjects.

It is also relevant to note that the specific plea raised by the petitioner in the writ petition is that by virtue of the decision taken by the Standing Committee of the Academic Senate in the meeting held on 13-2-2004, which was communicated to all

the colleges affiliated to the 1st respondent University, the candidates admitted to different courses in the academic year 1994-95 and thereafter are eligible to appear for the backlog papers in the annual examinations of 2004. According to the petitioner, he is entitled to the benefit of the decision taken by the Standing Committee and there is absolutely no justifiable reason to reject his application seeking permission to appear for the examinations held in August, 2004. The said contention has not been answered in the counter-affidavit filed by the 1st respondent.

In the circumstances and particularly keeping in view the fact that the petitioner has already appeared for the examination in pursuance of the interim directions granted by this Court, I am of the view that the matter requires reconsideration.

Accordingly, the Writ Petition is disposed of with a direction to the 1st respondent to consider the matter afresh and pass appropriate orders as to the eligibility of the petitioner to appear for the annual examination of 2004 in terms of the decision of the Standing Committee of the Academic Senate dated 13-2-2004 and communicate the same to the petitioner within a period of four weeks from the date of receipt of this order. Since the petitioner has already appeared for the examination in pursuance of the interim directions granted by this Court, it is made clear that in case the petitioner is found to be eligible to appear for the examination, the 1st respondent shall declare the result of the petitioner forthwith. In case it is found that the petitioner is not eligible, it is open to the petitioner to challenge the decision of the 1st respondent if he so chooses by working out the appropriate remedy as available under law.

The Writ Petition is accordingly disposed of. No costs.

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June, 2005.

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To

1. The Registrar, Osmania University, Hyderabad.
2. The Principal, The Deccan College of Engineering & Technology, Darus-Salam, Nampally, Hyderabad.

3. Two CD copies